IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8531 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAKESH @ MUNNO BHANUPRASAD BRAHMBHATT

Versus

COMMISSIONER OF POLICE

Appearance:

HL PATEL ADVOCATES for Petitioner

Mr.K.C.Shah, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 20/10/2000

ORAL JUDGEMENT

1. The petitioner, through this petition under Article 226 of the Constitution of India, has challenged the detention order dated 11.7.2000 passed by the Police Commissioner, Ahmedabad City, under Section 3(1) of the

Prevention of Anti-social Activities Act (for short "PASA").

2. Shri V.H.Patel, learned Counsel for the petitioner and Shri K.C.Shah, learned A.G.P. for the respondents have been heard.

3. Shri Patel has challenged the impugned detention order only on two counts, the first is that the activity of the petitioner cannot be said to be prejudicial to maintenance of public order hence the impugned order is illegal. The second contention has been that the privilege claimed by the Detaining Authority u/s.9 of the Act was improperly claimed which has materially affected the right of the petitioner to make effective representation in his defence inasmuch as the names of the witnesses have not been disclosed by the Detaining Authority. Shri K.C.Shah, learned A.G.P. on the other hand has urged that the detention order is perfectly valid and that the discretion of the Detaining Authority was properly exercised u/s.9 of the Act and that once the satisfaction of the Detaining Authority is reached that the activities of the petitioner are prejudicial to maintenance of public order it cannot be questioned in a writ petition on the ground that materials before the detaining Authority were not sufficient for reaching the subjective satisfaction.

4. I have considered the rival contentions of the learned Counsel representing the two sides.

5. So far as the first contention of Shri Patel is concerned it is true that the bootlegger can be detained under the Act if his activities are found prejudicial to maintenance of public order. But if his activities are prejudicial to maintenance of law and order then detention under this Act is not permissible. Needless to say that the distinction between "Public Order" and "Law and Order" has been defined and settled in catena of decisions of the Apex Court as well as by this Court. Public order is said to have been disturbed when the persons residing in a particular locality are affraid to this extent that the peace and tranquility and even tempo of life in the society or in the locality is disturbed. Law and order situation is different from disturbance of public order. If minor incident occurs between the two individuals it may give rise to disturbance of law and order which can be effectively tackled by the Police Authority under the Criminal Law prevailing in the country and not under the preventive detention law. The detention under the preventive detention law deprives the

detenue of having a trial regarding allegations made against him and he has to feel satisfied with the subjective satisfaction of the detaining Authority which is indicated in the detention order, may be on the ground of material placed before it by the Sponsoring Authority.

6. In the instant case there are two materials against the petitioner. One is for showing his involvement in the bootlegging activities four cases were registered from January, 2000 to June 2000 and all the cases are pending investigation. There is no mention in the grounds of detention that on either of these occasions the petitioner created situation at the time of search and seizure which was likely to create a situation where disturbance of public order could have arisen, nor it was alleged that the activities of the petitioner on those four occasions created disturbance of public order. Consequently these four cases could not furnish material, what to say of substantial material for passing the detention order.

7. Then remains the statements of two witnesses. These statements were recorded on 9.7.2000. The incident narrated by these two witnesses occurred on 8.6.2000 and 13.6.2000. What is mentioned in the grounds of detention regarding these two incidents it cannot be said to have created a situation in which there was liklihood of breach of public order. On the other hand if at all the entire statement of the two witnesses on the two occasions is considered it seems to be sheer imagination of the Sponsoring Authority or the Police Authority who recorded these statements. It does not appeal to reason that the petitioner whould have opened the Rampuri Knife and would have placed the blade of the knife on the neck of one of the witnesses. It was not a case where film shooting was arranged, where such activity of the petitioner could have been appreciated. It is true that the statements of the two witnesses have to be taken on their face value and those statements cannot be reappreciated in a writ petition, but even a reasonable man from these statements could not draw conclusion that the activities of the petitioner on these two occasions were such which were likely to create disturbance of public order or even tempo of the society. Consequently these grounds were also not sufficient grounds for passing the detention order.

8. The grounds of detention further indicate that it was a hurried action on the part of the detaining Authority and he passed the detention order either with a pre-plan or he acted as a rubber stamp of the Sponsoring

Authority. If the translation of the grounds of detention supplied is correct then there should be no hesitation in observing that the detaining Authority himself was confused whether he was passing the detention order against the petitioner because he was involved in bootlegging activity or that he was a dangerous person. At Page : 8 of the translated copy of grounds of detention it is mentioned by the detaining Authority as under :

"Further by indulging in dangerous activity as stated above you are becoming prejudicial in maintenance of public order "

It therefore indicates that the detaining Authority on the basis of grounds of detention passed amalgum of detention order which was an order on account of bootlegging activity as also on account of petititoner being dangerous person, but the ingredients of the petitioner being dangerous person are not disclosed in the grounds of detention hence the grounds of detention which have been furnished to the petitioner are without application of mind.

9. It is further revealed from the grounds of detention that the detaining Authority was pre-determined to detain the petitioner under the preventive detention in any manner he liked. It is mentioned in the grounds of detention that out of four offences committed by the petitioner under the Prohibition Act he was in judicial custody concerning the offences at Sr.Nos.1 and 4. The petitioner was released on bail in connection with offences mentioned at Sr.Nos.2 & 3. The detaining Authority was so much apprehensive that though it was thought that application for cancellation of bail in two cases against the petitioner was in contemplation, but no application for cancellation of bail was moved. The enxiety of the detaining Authority to keep the petitioner behind the bars under the pretext of PASA is further exhibited from the grounds of detention where it is mentioned that the petitioner may file bail application in connection with the offences at Sr.Nos.1 & 4, and there is all possibility that he may be enlarged on bail and thereafter the petitioner may repeat his bootlegging activity. If a person is already in jail in connection with two offences it is difficult to imagine how he can be a person prejudicial for maintenance of public order in the mind of the detaining Authority. The detaining Authority felt that the application for cancellation of bail lu/s.437(5) Cr.P.C. will take long time and it is on this ground that he decided to pass detention order by

non-application of mind and as a result of pre-determination and acting as a rubber stamp of the Sponsoring Authority. As such material on record placed before the detaining Authority hardly furnished sufficient ground for passing the impugned order.

10. It may also be mentioned that the detaining Authority acted in a great haste. Statements of the two witnesses who are mentioned in the grounds of detention were recorded on 9.7.2000. It seems that the detaining Authority, namely, Police Commissioner, Ahmedabad, had no other important business to attend and he was only looking after verification of the statements of these two witnesses and therefore he diverted all his attention and energy only for this work on the very next day, namely, on 10.7.2000 and passed hasty impugned order again on the next day on completing verification i.e. on 11.7.2000.

11. From what has been discussed above it clearly follows that the impugned order was passed by the detaining Authority in a great haste with a pre-determined mind and without application of mind to the provisions of section 3 of the PASA Act. Such order cannot be sustained in eyes of law.

12. The petition, therefore, succeeds and is allowed. The impugned order is quashed. The petitioner shall be released forthwith unless wanted in some other case.

sd/-

Date : October 20, 2000 (D. C. Srivastava, J.)

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